

Information for Victims



Mental Health
Review Tribunal

The Role of the Mental Health Review Tribunal

The Mental Health Review Tribunal was established under the *Mental Health Act 2007*. It has a wide range of responsibilities and can make orders about the treatment, care, detention and release of forensic patients.

A forensic patient is a person who the Court has:

- Found unfit to be tried for an offence and ordered to be detained in a correctional centre, mental health facility or other place (potential victims cannot register at this stage);
- Found not guilty by reason of mental illness or nominated a limiting term and ordered to be detained in a prison, hospital or other place
- Found not guilty by reason of mental illness and released into the community subject to conditions.

All forensic patients are reviewed by the Tribunal. The Tribunal may issue orders after a hearing in relation to the care, treatment, detention, leave or release.

The Forensic Patient Victim Register

The Tribunal maintains a Forensic Patient Victim Register. A person who is a victim of crime or a member of their immediate family can be registered. Registered victims can ask to be notified by the Tribunal about upcoming hearings, be told about the outcome of hearings, make submissions about certain kinds of restrictions or be contacted if a forensic patient escapes or the Tribunal issues an order for the apprehension of a conditionally released patient.

Eligibility to register as a victim

A person who is a victim of an act of violence or, in the case where the victim has died as a result of the act of violence, a member of the victim's immediate family is eligible to register on the Forensic Patient Victim Register.

The family members of the person who has died as a result of the act of violence who are able to register are:

- the victim's spouse
- de facto partner (including of the same sex) who has cohabited with the victim for at least 2 years
- parent, guardian, or step parent of the victim
- child or step child of the victim or some other child of whom the victim is the guardian
- brother, sister, half brother, half sister, step brother or step sister of the victim

When to register

The Tribunal will only register people as a victim after the Court process has been finalized. This means that a person could be registered after a patient is found not guilty by reason of mental illness or after the Court has set a Limiting Term(s).

Your rights

A registered victim can ask the Tribunal to tell him/her of the date of the next hearing, whether any changes to the arrangements for the patient are likely to be considered, if there is a request to release the patient or if the patient has escaped or failed to return from leave and the Tribunal has issued an order for apprehension.

A registered victim has the right to ask the Tribunal to put restrictions on the place where a patient can visit or live. This is usually done because the victim or their family lives or works in that area. A victim can also ask the Tribunal to order that a patient not contact them. There is only a need for these restrictions if the Tribunal is considering a request to give a patient leave or release.

Apart from these special rights victims are entitled to attend hearings and listen to proceedings in the same way as other members of the public.

You can decide how much you want to be involved in Tribunal hearings. You can:

- Ask the Tribunal to write to you before each hearing to tell you of the date of the hearing and whether any changes will be discussed.
- Ask the Tribunal to tell you the outcome of the hearing.
- Write to the Tribunal if you do not want the patient to visit or live in an area, or contact victims or members of the victim's family.

- Attend the Tribunal hearing (usually by a video link from the Tribunal's buildings in Gladesville).
- Ask that a representative attend the hearing on your behalf.

You will stop being a registered victim when the forensic patient has been:

- unconditionally released or
- when the forensic patient's Limiting Term has expired (whichever comes first) or
- you ask to be removed from the register.

The Charter of Victims Rights under the *Victim's Rights and Support Act 2013* sets out the rights of a victim. In particular, 6.15 of the charter states that:

A victim will, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

How to be involved in the Tribunal's decisions

If you are a registered victim, you can be sent a letter that tells you of the date of the hearing. The letter will say if a change is being requested. Some registered victims find this distressing and choose to only be notified when a change to the conditions of detention is being requested.

If you would like the Tribunal to make an order restricting the patient from visiting or living in certain places, you can write to the Tribunal and your letter will be read by the Tribunal members. It may also be shown to the patient and/or their lawyer. If you do not want this to happen, you should say so in your letter. You can ask that your first letter be considered at each hearing, or write a new letter before each hearing.

If you would like to attend the Tribunal's hearing, it is best if you let the Tribunal know first. As many of the Tribunal's hearings are in secure facilities (prisons or hospitals) the easiest way to participate in a hearing is to be linked in by phone or video from the Tribunal in Gladesville.

If you come to the hearing, and if you are asking the Tribunal to make restrictions, you may be asked to say something extra in the Tribunal hearing.

If you knew the forensic patient before the offence occurred, you may be able to give the Tribunal information that is relevant to the Tribunal's decision about the patient's care, treatment or detention. If you have information of this kind, it is best if it is provided to the Tribunal in writing before the hearing. In the interests of procedural fairness, the information will be provided to the patient's lawyer. It may be necessary to disclose the information to the patient's treating team. The information can be deidentified if you have concerns about disclosing the information. These concerns should also be explained in the letter to the Tribunal.

Otherwise, under the *Mental Health Act*, you are only allowed to listen to or watch the hearing.

It is possible that the Tribunal will be asked to exclude all members of the public from certain parts of the hearing. In that case, the video-link may be put on mute, or you will be asked to leave the hearing room.

Some victims find it easier if they are supported by a victims' support group. Details of these groups are at the end of this document. Some people prefer that the support person attends the hearing as their representative and then tells them what happened at the hearing.

Applications before the Tribunal

The Tribunal is responsible for deciding:

- where a forensic patient should be detained,
- whether the patient can have any leave from the hospital (ie go outside of the hospital),
- if a patient is ready to be released into the community with conditions,
- if a patient is ready to be unconditionally released (so that they are completely free to resume their life in the community without conditions).

The Tribunal will be told in advance if the treating team or the patient is requesting a change to the arrangements for a patient. The Tribunal will then notify you, if you are a registered victim and have asked to be advised about this.

Types of Leave

Escorted Day Leave

When the patient is transferred to another facility, he/she may at first not be allowed to leave the hospital. Leave may at first be restricted to the grounds of the hospital under the direct supervision by one or more staff. Leave is then gradually increased.

Supervised Day Leave

The forensic patient is allowed to leave the hospital in the trust of a person, usually a family member or a friend, who has been approved by the treating team as having the necessary understanding of how to look for and to respond to triggers that might mean the patient is becoming unwell. This type of leave allows the patient to exercise leave outside the hospital grounds and is gradually increased over time.

Supervised Overnight Leave

The forensic patient is allowed to leave the hospital in the trust of a person, usually a family member or a friend, who has been approved by the treating team as having the necessary understanding of how to look for and to respond to triggers that might mean the patient is becoming unwell. This type of leave allows the patient to exercise leave outside the hospital grounds and to stay in a house overnight.

Unsupervised Day Leave

In most cases this is the next step after supervised day leave and supervised overnight leave. It may be granted with a geographical restriction and/or non association clause which means the patient is not to contact you or come to your area. This type of leave is often allowed so the patient can attend programs for rehabilitation and education which are not available within the hospital grounds.

Unsupervised Overnight Leave

The forensic patient is initially introduced to one or more overnight stays in accommodation where he/she may be taking up a permanent residence when it is time to return to the community. This may be increased. It is usually in the care of a family member or friend or an approved residential facility.

Assessment for Leave

When hearing an application for leave, the Tribunal must consider the risk to the safety of the greater community and the forensic patient. It does this by scrutinizing the treating team's assessment of risk which is done by means of tests and other clinical tools, and testing the evidence at a hearing.

The Tribunal also considers any requests for geographical restriction and non association from registered victims.

On any particular day, leave will only be allowed if the patient has been assessed by staff of the hospital to be well enough on that day. All leave is subject to the conditions and restrictions that apply to the individual forensic patient's circumstances including time, place or other conditions imposed by the Medical Superintendent.

Leave is closely monitored on an ongoing basis by the treating team and the forensic patient may need to be tested for alcohol and drug use when returning to hospital.

Conditional/unconditional release

Conditional Release

When a patient no longer needs to be kept in the kind of restrictive environment that is offered by a hospital, the patient can be conditionally released.

The forensic patient is no longer held in a locked environment and is living in the community. He/she may be managed by a community mental health team.

Before an order for conditional release is made, there is an independent risk assessment required by the Tribunal.

The Tribunal will include a number of conditions in the order for conditional release and the forensic patient must obey these. These conditions could include restrictions on where the patient can live or visit, and restrictions on contacting people.

Unconditional Release

When the patient is ready to safely live in the community without any restrictions, the patient can be unconditionally released.

The person is no longer a forensic patient and is not required to obey any conditions imposed by the Tribunal. Tribunal hearings will no longer be held and the person resumes independent living. Before an order for unconditional release is made, there is an independent risk assessment is required and must be considered by the Tribunal.

When a forensic patient is unconditionally released, you are no longer a registered victim.

Mental Health Facilities Locations

Forensic patients who are detained in a hospital are usually housed in one of these hospitals (high and medium secure facilities are discussed later in this document):

Long Bay Hospital is a maximum security facility jointly managed by Corrective Services NSW and Justice Health. It is located within the grounds of Long Bay Correctional Centre.

The **Forensic Hospital** is located on Anzac Parade at Malabar. It is a high security facility managed by Justice Health.

The **Bunya Unit** at Cumberland Hospital is located in Parramatta. It has medium secure facility.

The **Kestrel Unit** at Morisset Hospital in Morisset is also a medium secure facility.

The **Macquarie Unit** at Bloomfield Hospital in Orange is a medium secure facility.

The **Macquarie Hospital** at Ryde is a medium secure facility.

The **Concord Centre for Mental Health** is a low secure facility.

Frequently Asked Questions

What the Tribunal can do

- Advise registered victims of the general pathway for forensic patients
- Make an order for the forensic patient's transfer to another facility with leave
- Make an order for the forensic patient's conditional release
- Make an order for the forensic patient's unconditional release
- Consider applications for non association and the forensic patient's geographical restriction when the forensic patient is to exercise leave or be conditionally released.

What the Tribunal can't do

- The Tribunal cannot provide legal advice to you or to the treating team
- The Tribunal cannot change a Court's ruling
- The Tribunal cannot provide information to registered victims about medical treatment
- The Tribunal cannot provide information about exact details of the address where leave is to be exercised

How do I register?

Forensic Patient Victim Registration Forms can be found on the Mental Health Review Tribunal's website at: www.mhrt.nsw.gov.au or you may wish to contact the Forensic Division on (02) 9816 5955. Tribunal contacts are listed at the end of this document.

When filling out the form you will need to tell the Tribunal how much you want to be involved in tribunal hearings and what things you want to be informed about.

I received a letter, what should I expect to happen at a hearing?

The Tribunal will send a letter advising of a proposed date with a time to be advised. The letter will tell you the nature of the application for consideration. When you receive your letter, you will

need to contact the Tribunal to let us know if you will be making a submission and whether you would like to attend the hearing. The Tribunal will send another letter after the hearing to officially let you know the result of the hearing.

If you have chosen to attend the hearing, you should remember that hearings may run later or earlier than scheduled. It is best that you arrive fifteen minutes before the scheduled time and be prepared for possible delays. If you are attending by video-link from Gladesville, a staff member from the Tribunal will sit with you and arrange for you to be linked in by video to the place where the hearing is being held.

Hearings are recorded. Registered Victims attending a hearing are expected to remain quiet unless asked a question by the person chairing the hearing.

Do I need to attend hearings?

You do not need to attend hearings. You can ask that any letter you write requesting restrictions be considered at each review hearing. You will still be informed about what orders were made at the hearing. The Tribunal can let you know of the outcome of a hearing. You need to let the Tribunal know which hearings you want to be told about.

What are my rights?

Registered victims' rights are discussed above. They are also set out in the Charter of Victims Rights under the *Victims Rights Act 1996*. Your rights before the Tribunal are limited to submissions for non association and geographical restriction where leave or release is requested. However, the Tribunal can also take into account relevant information that you may have about the forensic patient's behaviour before the offence.

Do I see the forensic patient and does the forensic patient see me?

The patient cannot see you but can hear you. The three panel members will see you and announce that you are at the hearing. All efforts are made during the hearing to stop registered victims being in view of the forensic patient. But there are limitations in the facilities and equipment at places where the hearings are held and this may not always be possible.

I want to register but don't want the forensic patient to know

The Tribunal understands that in many cases registered victims can be close family members of the forensic patients. The Tribunal is aware that in some cases family members are supportive of the forensic patient receiving appropriate care and treatment but at the same time do not wish to let go of their role as a registered victim. The Tribunal can help by ensuring that any identifying details are blacked in written submissions.

How long before the forensic patient is released?

People who have been found not guilty by reason of mental illness will continue to be forensic patients up until they are unconditionally released. The length of time varies depending on how each patient responds to treatment and rehabilitation. The length of time can vary from a few years to never being unconditionally released. A person on a limiting term will be released from the forensic order at the end of their limiting term unless released earlier by the Tribunal.

I received a letter notifying that the forensic patient is to be transferred to another facility with escorted day leave, supervised day leave or supervised overnight leave. What does this mean?

This means that the team responsible for treating the forensic patient have applied to the Tribunal for the patient to move to another hospital or facility and to have access to some level of leave.

When an application for transfer and leave is made, the most important consideration for the Tribunal is the analysis of risk to the safety of the community and to the patient. Risk assessment tools are used by qualified forensic clinicians to assess the level of risk and to address other factors that may contribute to the forensic patient's potential for destabilization.

The Tribunal will not approve any leave unless it has considered the safety of the community and the forensic patient.

What do the terms high security and medium security mean?

High security

As a general rule this means that the forensic patient does not have access to leave outside of the perimeter walls except for emergency leave. The Medical Superintendent of a mental health facility can issue leave for emergency medical appointments or other emergency subject to assessment.

Where the forensic patient is detained in a prison, that patient is subject to the security conditions agreed between the Director-General of the Ministry for Health and the Commissioner of Corrective Services or the Department of Juvenile Justice.

Medium security

A medium secure facility is a locked facility within a hospital. The forensic patient may be given various forms of leave, to allow him/her access to the grounds or the community outside. The facility may include a closed ward environment where entry and exit is prohibited for patients and limited to authorised visitors only.

I fear for my safety and the safety of my family, I don't want him/her released, is there anything I can do?

Registered victims who have concerns about their safety can make a submission to the Tribunal requesting that a non association clause and geographical restriction be considered for the periods the forensic patient is on leave or while on release. This means that the patient is not allowed to contact you or enter the area you live in. If you have immediate concerns for your safety you should contact the Police.

Where is the forensic patient? I want to know where he/she is located? Can I have a photograph?

The Tribunal is not allowed to tell you the location or address of a forensic patient, or provide you with personal information about the patient. It can only tell you that the person is being detained in a prison or a hospital.

I want to know what treatment he/she is receiving and I want to see medical reports.

The Tribunal is not allowed to give you any information about the forensic patient's medical treatment or history.

What happens if the forensic patient does not comply with the conditions of the Tribunal order?

If a forensic patient who has been granted leave does not comply with the conditions of the order, that leave may be suspended. Leave can restart when the patient is better. If a patient has become very unwell, the patient may be transferred to another hospital for treatment.

What happens if the forensic patient absconds or breaches the conditions of release?

Where a forensic patient has escaped or has continuously not obeyed the conditions of a Tribunal order, the Tribunal will issue an order that will authorize police to return the patient to a hospital or prison.

You can tick the box on the registration form to say that you wish to be told when a patient escapes or absconds. If you have ticked this box, the Tribunal will contact you if the patient has escaped from the facility, or the patient has not returned to the facility as required and the Tribunal has issued an order for the patient to be apprehended.

The Tribunal will then hold a review to find out why the patient has not followed the conditions of the order and may make an order after the hearing as to where the patient should be held or should continue to live.

I oppose the transfer and/or leave, how can I appeal this decision

Tribunal decisions can be appealed to the Supreme Court. However, registered victims can only appeal the Tribunal's decision regarding non association and geographical restriction.

Tribunal contacts

Principal Forensic Officer – Community Team

Principal Forensic Officer – Correctional Team

Forensic, Team Leader

Tel: (02) 9816 5955

Fax: (02) 9879 6811

Email:

mhrforensic@doh.health.nsw.gov.au

Postal Address:

Mental Health Review Tribunal

PO Box 2019

BORONIA PARK NSW 2111

Other useful contacts

- **Victims of Crime Assistance League (VoCAL)** (02) 4961 4755
www.vocal.org.au
- **Homicide Victims' Support Group (HVSG)** (02) 8833 8400
www.hvsgnsw.org.au
- **Victims' Services at Ministry of Justice** (02) 8688 5511
www.lawlink.nsw.gov.au/vs
- **Enough is Enough** (02) 9542 4029
www.enoughisenough.org.au
- **Police Assistance Line** 131 444